

IN THE MATTER OF	:	BEFORE THE
W.H. Boyer, Inc.	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. BA-19-018C

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DECISION AND ORDER

On March 12, 2020, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure (“Rules”), heard the petition of W.H. Boyer, Inc., Petitioner, for a Conditional Use to expand and modify an existing business of a Landscape Contractor under Howard County Zoning Regulations (“HCZR”) Section 131.0.N.32 and to use modular offices and shipping containers for office space and storage under HCZR Section 131.0.O.4. The June 3, 2019 conditional use plan filed with the petition was amended by redline revisions on March 12, 2020. The redline revisions included changes to materials for parking areas, the addition to the plan of two existing parking spaces at Building 17, and revisions to the parking space counts, none of which were deemed substantive under Rule 9.5 of the Rules.

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Rules.

The Petitioner was represented by William E. Erskine. Evan Diamond, V.P., W. H. Boyer, Inc.; Paul Sill, P.E. Sill Engineering Group, LLC; and Carl Wilson, V.P., The Traffic Group, Inc.; testified in support of the petition. No one appeared in opposition to the petition.

The record remained open after the March 12, 2020 hearing to allow Petitioner to submit further revisions to the Conditional Use Plan to more fully show certain existing uses and the locations of proposed uses and modifications. The Hearing Examiner received and entered into the record, on April 22, 2020, a further revised Conditional Use Plan along with a redline of the Revised Conditional Use Plan, both dated March 17, 2020. The further redline revisions included added landscape contractor use areas, the change of location of some of the commercial vehicle storage areas, removal of the spring mulch area, and an increase in the size of a proposed storage building, none of which were deemed substantive under Rule 9.5 of the Rules. The record was closed on April 22, 2020 upon the Hearing Examiner's receipt of the revised Conditional Use Plan.

The following exhibits were entered into the record:

Ex. 1. The March 12, 2020 Revised Conditional Use Plan.

Ex. 2. March 17, 2020 Revised Conditional Use Plan ("Plan" or "Conditional Use Plan")

Ex. 3. March 17, 2020 Revised Conditional Use Plan Redlined ("Redlined Plan")

FINDINGS OF FACT

Based upon the preponderance of the evidence presented at the hearing, I find the following facts:

A. **Property.** The subject property, known as 2955 E Route 97, located at Tax Map 14, Grid 22, Parcels 80, 93, 204, 205, 206, and 221 - Lots 7 and 8 (the "Property"), comprises 60.06 acres and is located in the RR-DEO zoning district. The Property is the site of an agricultural nursery, a landscape contracting and snow removal business, an antique store, a seasonal snowball stand, and three residential dwelling units. The part of the Property that

comprises the residences, the landscape contracting business and the agricultural nursery is accessed via a variable-width asphalt driveway leading from RT 97 and proceeding along the southern border of the Property.

B. **Vicinal properties.** To the north and east lie RR-DEO zoned parcels used as single family residential. To the south are RR-DEO parcels used as single family residential and for an agricultural nursery. To the Property's west, across RT 97, are the B-2 (Business: General) zoned US Post Office and an office building.

C. **Roads.** RT 97 in front of the Property has two travel lanes and approximately 40 feet of paving within an 80-foot wide right-of-way. The speed limit is 45 miles per hour. In 2019, the State Highway traffic count on RT 97 was 12,100 AADT.

D. **Water and Sewer Service.** The Property is not within the Planned Service Area for water and sewer and is served by private well and septic facilities.

E. **General Plan.** The Property is designated Low Density on the Designated Place Types Map of PlanHoward 2030. RT 97 is a Minor Arterial.

F. **Zoning History.** In BA 860-C, the Board of Appeals in a May 16, 1976 decision granted a Special Exception for a greenhouse and garden shop with conditions. In CE 83-09E, the Board of Appeals in a July 14, 1983 decision granted a Special Exception to add retail sales of antiques and crafts from a historic building with conditions.

G. **Current Use.** The Property is currently used for an agricultural nursery and landscape contractor business, neither of which were approved by any Howard County zoning authority. The subject Petition seeks to remedy any existing or potential zoning violation or grounds for revocation of the previous conditional uses.

H. Proposals.

1. Landscape Contractor. Petitioner seeks to expand and modify an existing business of a Landscape Contractor (Section 131.0.N.32). Petitioner seeks approval for the existing Landscape Contractor uses that were not previously approved and that are not included in the existing greenhouse and nursery business that was previously approved. Petitioner also seeks approval for modification and expansion of the existing Landscape Contractor uses. The Conditional Use Plan (and the Redlined Plan) show both existing and proposed areas to be used for Landscape Contractor uses. Those uses are set forth as grey highlighted areas on Sheets 1, 2, 3 and 6 of the Conditional Use Plan. The Conditional Use Plan details which areas are used for parking, commercial vehicle parking, equipment storage, maintenance, product storage, etc. The Petitioner also seeks approval for snow removal activities.

2. Office and Storage. Petitioner seeks approval for the use of modular office space and storage containers (Section 131.0.O.4) in support of its Landscape Contractor and agricultural nursery businesses. Those uses are set forth as grey highlighted areas on Sheets 1, 2, 3 and 6 of the Conditional Use Plan. The Conditional Use Plan details which areas are used for parking, commercial vehicle parking, equipment storage, maintenance, product storage, etc.

I. Testimony.

1. Evan Diamond, V.P., W. H. Boyer, Inc.

Evan Diamond, V.P., has been with the company for 30 years. He testified that the business of the Petitioner has existed in some form on the Property since 1974. He

stated that about 5 years ago the Petitioner was cited for violation of the zoning regulations as a result of the landscape contractor activities not having been approved in previous hearing authority matters. Mr. Diamond explained his understanding that farm activities on the Property can take place as a matter of right, and that the agricultural greenhouse activities were previously approved.

He explained also that in addition to the seasonal landscape activities, the business uses the equipment during winter to conduct snow removal activities.

Mr. Diamond stated that the company currently has 72 employees during the landscape contracting and nursery season. Of those, only 20 actually work onsite. The others come to the site, park, get into landscape contractor (or snow removal) vehicles, and exit the site early in the morning to go to job sites. They then return at the end of the workday and leave the site. He stated that many of the seasonal employees are legal immigrants who carpool to the site together. They usually arrive about 5:30 AM and depart about 6:30 PM. Because they carpool to the site, current parking is adequate. He testified that the company does not plan to increase the number of employees overall. There is, however, a plan for a future employee parking lot to be constructed as part of the Conditional Use Plan.

Regarding the snow removal business, he stated that during the snow season, some employees will take home the equipment so that they can deploy in the morning when necessary. Mr. Diamond testified that he does not believe the snow removal activities will cause noise offsite or activities that will be a nuisance to the neighborhood.

Mr. Diamond testified that in his experience there is no noise, dust or odor that have effects offsite. He also stated that any dust problems are mitigated by the laying of calcium onto the gravel drives. Mr. Diamond stated that he does not believe there will be any negative impacts to development on other properties. Mr. Diamond testified that he does not believe that there will be any negative impact to any environmental features on the site as a result of the proposed Plan. Mr. Diamond stated that there has been only one complaint about the activities on the site and that was about 20 years ago.

Mr. Diamond stated that he believes the ingress and egress is sufficient and that to his knowledge there has only been one accident on RT 97 in the area during the last several years.

Mr. Diamond stated that the Petitioner acquired an easement from the adjacent landowners to the south which the Petitioner desires to serve as the required structure and use setback from the uses on the property to the south.

Mr. Diamond clarified that the Petitioner is requesting approval for construction to take place in two phases. The first phase will include the structures numbered 25, 27 and 30 on the Plan. The second phase will include the new parking lot and structures numbered 29, 31 and 32 on the Plan. Mr. Diamond stated that the future parking lot located adjacent to future building No. 32 is part of the second phase.

2. Paul Sill, P.E. Sill Engineering Group

Mr. Sill prepared the Conditional Use Plan and at the hearing testified that the Plan meets each of the General Approval Criteria Under HCZR Sec. 131.0.B and

specific criteria under HCZR Sec. 131.0.N.32 and HCZR Sec. 131.0.O.4. Mr. Sill testified that the Conditional Use Plan shows some structures and use areas that will be moved in order to comply with the regulations. Mr. Sill went through each criterion and testified that in his view the Conditional Use Plan meets all of them. He testified also that he does not believe the activities will cause any adverse impact greater than the impact normally associated with such uses.

3. Carl Wilson, V.P., The Traffic Group, Inc.

Mr. Wilson was engaged to conduct a study to evaluate the safety of the ingress and egress to and from the site and to determine whether the proposed use will impact the amount of traffic to and from the site. He testified that, in general, the site has and will continue to have adequate site distance, and that no new points of access are proposed. He testified that there will not be an increase in traffic to and from the site as a result of the requested changes, that the access points are safe and that no auxiliary lanes are required.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

A. General Criteria for Conditional Uses (Section 131.0.B of the Howard County Zoning Regulations).

- 1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.**

PlanHoward 2030 policies are not directly related to conditional use requests for

Landscape Contractors or the use of modular office space and storage containers. However, so

long as such uses are properly sited and appropriately scaled and/or screened, they can be generally compatible with rural residential areas.

Thus, the proposed use will be in harmony with the Howard County General Plan and PlanHoward 2030.

- 2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.**

The 60.06-acre property far exceeds the five-acre lot size requirement. The total area to be used for conditional uses is 43.49 acres. The indoor and outdoor storage of commercial vehicles, equipment, materials and supplies is approximately 4.59%, which is below the 5% maximum allowed. Additionally, most of the buildings and use areas comply with the 100-foot setback requirement.¹ The proposed hours of operation are from 5:30 a.m. to 6:30 p.m., but most of the activity is in the morning and late afternoon when employees are arriving at the site and then exiting for work offsite. Thus, such activity is compatible with rural residential areas since these hours are similar to farming operations commonly found in similar areas.

The Functional Road Classification Map of PlanHoward 2030 depicts RT 97 as a Minor Arterial, a classification which "provides interconnection between principal and intermediate arterials, as well as access to or through high-density residential, commercial, retail, or industrial land areas". Mr. Wilson testified that this road classification is compatible with the business on the Property.

¹ There is an area proposed for use breaches the 100-foot setback, but this Decision and Order will limit such use to areas beyond the 100-foot setback, so as to comply with the regulations. (See Section B.2 herein.)

Therefore, the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use is appropriate for the site.

- 3. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will not be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning district.**

The Property is 60.06 acres and all new buildings/use areas approved by this Decision and Order will be over 100 feet from adjacent properties. Most of the more intense activity is interior to the site. Existing and proposed vegetation on the Property will properly screen the proposed use from adjacent properties. Both Mr. Diamond and Mr. Sill testified that there have been virtually no complaints regarding the activities on the site and that there is little to no impact offsite of dust, fumes, vibrations, hazards or odors. Additionally, the access point on RT 97 is adjacent to an agricultural nursery and across from an office building. The hours of operation are from 5:30 a.m. to 6:30 pm., which are compatible with commercial and rural residential areas.

Therefore, the impact of adverse effects will not be greater at the proposed site than it would generally be elsewhere in the RR zoning district.

- 4. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.**

All proposed building and structures approved by this Decision and Order will comply with the height maximum of the RR zoning district and the 100-foot Conditional Use setback.

The proposed landscaping consists of evergreen and deciduous trees along the perimeter to screen the proposed use from adjacent properties.

Therefore, the location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

- 5. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

Section 133.0 of the Zoning Regulations does not contain a specific parking number requirement for a Landscape Contractor use.

The Conditional Use Plan applies the office parking requirement of 3.3 spaces per 1,000 square feet to the existing office space of 1215 SF and 5 spaces per 1,000 square feet to the existing retail space of 1270 SF, for a total of 11 required spaces. Currently, 44 total spaces are provided.

As for future uses, the Conditional Use plan also includes the office parking requirement of 3.3 spaces per 1,000 square feet to the 5,820 square feet of proposed future office for a requirement of 20 spaces. The plan indicates that an additional 43 future spaces are proposed to be located at the interior of the site adjacent to the future proposed office space.

Mr. Diamond testified that the 52 off-site employees now park in the employee lot at the area of the site along RT 97 which currently includes 42 spaces. He also testified that most of the seasonal workers who are legal immigrants carpool to the site because they do not drive and/or

do not have cars. Since many of the employees who are seasonal workers carpool to the site, the current parking is adequate for the number of employees.

The current parking areas along RT 97 are screened by existing landscaping and berms. The new parking areas will be interior to the site and thus adequately shielded from view of adjacent properties.

Thus, the number of parking spaces will be appropriate to serve the particular use.

Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

- 6. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.**

Precise sight distance measurements can only be determined by a detailed sight distance analysis, which is typically conducted during Site Development Plan review. However, the estimated site distance is over 500 feet in both directions. According to the American Association of State Highway and Transportation Officials (AASHTO) guidelines, based on an estimated stopping sight distance of 360 feet for a car going 45 miles per hour, the proposed access point on RT 97 appears to provide safe access with adequate stopping sight distance.

The driveway into the site from RT 97 is shared with a residential property (Parcel 221 - Lot 8). According to the Conditional Use Plan, there is an offsite use agreement for the area bordering the driveway into the site which would mitigate any inconveniences caused by shared use of the driveway.

Thus, I find that this criterion has been met.

7. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

The closest environmentally sensitive areas are a stream and floodplain area that extend across parcels 80, 204, and 221 - Lot 7. All building and use areas are located out of the stream buffer and floodplain.

Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

8. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

There are two historic structures (HO-414 and HO-177) across RT 97 within 500 feet of the Property and one historic house (HO-175) on the Property. The proposed use will be screened from the off-site historic structures by vegetation and existing buildings. The Resource Conservation Division reviewed the proposal and commented that "the on-site historic house is to remain and the property is currently run as a landscape business and expansion on the site will not have further impact to the historic resource". Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

Therefore, the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

B. Evaluation of the petition according to Section 131.0.N.32 (Specific Criteria for a Conditional Use for a Landscape Contractor).

1. The site is at least 5 acres in area.

The Property is 60.06 acres.

2. **Buildings and outdoor areas to be used for *parking*, loading and storage of vehicles, equipment and tools and supplies shall be delineated on the Conditional Use plan and *located at least 100 feet from lot lines and public roads*.**

The current and future location of the buildings, outdoors storage areas, and parking and loading areas are delineated on the Conditional Use plan.

Employee Parking. Currently, both permanent and temporary seasonal employees primarily park in the parking areas along RT 97. This parking area is not located at least 100 feet from RT 97. The vehicles parked at the site for the Landscape Contractor business should be located at least 100 feet from lot lines and public roads. The Conditional Use Plan provides for 43 proposed new parking spaces on Parcel 80 which will be located at least 100 feet from public roads and from the lot lines between the Petitioner's property and property owned by third parties. (The proposed future parking area is located less than 100 feet from Parcel 204, but since all of the interior lots are used for Conditional Use activities, the interior lot lines are not subject to the setback requirement in this section.)

Commercial vehicle parking and loading and storage of vehicles, equipment and tools and supplies. All such areas are greater than 100 feet from lot lines and public roads *except for* the areas located on Parcel 80 that are shaded grey directly north of the driveway and south of the area marked "Ex. Cold Frame" to be used for Landscape Contractor commercial vehicle parking (1535.45 SF) and Landscape Contractor loading areas (15,793.15 SF). To the extent that these areas are to be used for Landscape Contractor uses, those Landscape Contractor uses must be at least 100 feet from the lot line between Parcel 80 and "Rosebar Lot 8." (While the Petitioner pointed out that there

exists an easement and/or off-site use area agreement between Petitioner and the owner of "Rosebar Lot 8," the conditional use regulation expressly states that such areas must be "at least 100 feet from lot lines.") If these areas are used for uses permitted as of right in the RR district or if the uses were approved in BA 860-C, they may continue to be used in accord with the RR setbacks and/or the decision in BA 860-C.

3. The location and design of the operation shall be such that the use will not be a nuisance to neighboring properties due to noise, dust or fumes.

The operations on the site are situated to limit the impact of noise, dust, and fumes on adjacent properties. The proposed buildings and outdoor storage areas (except for those described in B.2 above) are located within the interior of the site and are greater than 100 feet from adjacent properties. The property to the south is an agricultural nursery, the properties to the west directly across from the access point on RT 97 consist of an office/post office, the residential properties to the north are screened by existing dense vegetation, and the closest residence to the east is over 800 feet from the proposed buildings/use areas.

4. Buildings used for storage or offices will be screened or compatible in scale and character with other residential or agricultural structures in the vicinity. If new structures or additions to structures are proposed, architectural elevations or renderings must be submitted with the petition.

The Petitioner provided renderings of the proposed buildings in Exhibit C. All buildings are one story with pitched roofs and are compatible with agricultural buildings in the vicinity.

5. Outdoor parking and storage areas shall be screened from neighboring properties and roads.

Existing and proposed landscaping and vegetation on the Property will screen the parking and storage areas from adjacent properties and RT 97.

6. Minor repairs to vehicles or equipment are permitted, provided such activities take place inside a building. Body work, engine rebuilding, engine reconditioning, painting and similar activities are not permitted.

Mr. Diamond testified that minor repairs to vehicles and equipment are performed in the existing maintenance garage. No body work, engine rebuilding/reconditioning, painting, or similar activities will occur on the Property.

7. The area used for parking and storage of commercial vehicles, equipment, materials and supplies, whether exterior or interior, shall be limited to no more than 5% of the area of the lot.

The Conditional Use Plan dated March 17, 2020 states that the total area to be used for parking and storage of commercial vehicles, equipment, materials, and supplies is 4.59% of the 60.06-acre Property.

8. The Hearing Authority shall set limits on the maximum number of employees and shall set the days and hours of operation.

The Petitioner currently has and proposes to have 20 onsite employees and 52 seasonal offsite employees that will arrive at the Property and depart immediately for off-site work. Mr. Diamond testified that the off-site employees arrive early in their personal vehicles (many via carpools), man their vehicles for off-site work between 5:30 and 6:30 AM, leave the site in company vehicles, and then arrive back onsite around 5:00 to 6:30

PM. When they arrive back onsite after the workday, they leave in their personal vehicles.

The current and proposed number of employees (72 total -- 20 onsite and 52 offsite) is reasonable. So long as most seasonal off-site employees continue to carpool and, combined with the onsite employees, do not require more than the total number of parking spaces currently proposed (43), the maximum number of full-time (temporary or permanent) employees at any one time shall be ninety (90). This will allow the Petitioner flexibility to increase its workforce seasonally without exceeding maximum employee numbers, while also ensuring that the operations do not negatively affect adjacent properties.

The proposed hours of operation are:

Office	January - December	8:00 am to 6:00 om	Monday - Friday
Landscape	March - December	5:30 am to 6:30 pm	Monday - Saturday
Landscape	January - February	6:30 am to 5:00 pm	Monday – Friday

The above hours are reasonable and, according to the testimony of Mr. Diamond, there have been virtually no complaints about the operations on the site. Thus, these hours of operation are hereby approved.

9. **A snow removal service shall not be conducted as an accessory use unless specifically authorized by the Hearing Authority, upon a finding that the noise and level of activity of such a service will not be a nuisance to the neighborhood.**

The Petitioner proposes snow removal activities consisting of 33 employees, 11 vehicle-mounted snowplows, and salt spreaders. The salt spreaders and plows will be mounted to vehicles used in the landscaping operations. According to Mr. Diamond,

during the snow season, many employees are allowed to drive snow removal vehicles home with them when snow is forecasted. This allows them to deploy to the sites for snow removal first thing, without having to drive to the site and then deploy from there. This strategy reduces the number of vehicles exiting from the property for snow removal activities. In any event, the deployment is usually accomplished within a short period and, like the seasonal landscape operations, the employees arrive back to the site and then leave in personal vehicles, all within a reasonably short period. The evidence showed that the snow removal activities will not cause noise offsite or activities that will be a nuisance to the neighborhood.

The Hearing Examiner finds that the level of activity of this service will not be a nuisance to the neighborhood.

10. On an ALPP purchased or dedicated easement property the following additional criteria are required:

- **The use shall not interfere with farming operations or limit future farming production.**
- **Any new building or building addition associated with the use, including any outdoor storage and parking area shall count towards the cumulative use cap of 2% of the easement.**

Because there are no ALPP purchased or dedicated easements on the Property, this section does not apply.

C. Evaluation of petition according to Section 131.0.O.4 (Specific Criteria for a Conditional Use for a Storage or use of trailers, modular offices, office trailers, shipping containers, or refuse containers).

Under this section, a Conditional Use, or an enlargement or alteration of an existing Conditional Use, may be granted for the storage or use of trailers, modular

offices, shipping containers, or refuse containers in the RC or RR districts, provided that:

1. **The use is located on a lot or parcel that is three acres or larger.**

The Property is 60.06 acres.

2. **The use shall be screened and not visible from adjoining property lines or from the public street right-of-way.**

The existing dense vegetation and proposed landscaping along the perimeter of the Property will screen the modular office and shipping containers from adjacent properties and RT 97.

3. **The use shall comply with the structure and use setbacks.**

The modular office and shipping containers comply with the structure and use setbacks. (The existing modular office building located at the front of the Property along RT 97 is proposed to be moved to an interior location that complies with the setbacks.)

ORDER

Based upon the foregoing, it is this 19th day of May 2020, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of W.H. Boyer, Inc. for a Conditional Use to expand and modify an existing business of a Landscape Contractor, including snow removal activities (Section 131.0.N.32) and to use modular offices and shipping containers for office space and storage (Section 131.0.0.4) is hereby **GRANTED;**

Provided, however, that:

1. The Landscape Contractor use shall be conducted in conformance with, and the conditional use for a Landscape Contractor shall apply only to the uses and structures as described in, the Petition and Conditional Use Plan dated March 17, 2020 and not to any other

activities, uses, structures or additions on the Property;

2. The vehicles of employees who work within the Landscape Contractor business shall be parked in areas that are located at least 100 feet from lot lines and public roads, which, on the Conditional Use Plan is the area designated as “Future Asphalt/Gravel Parking, LS Use, 17401.45 SF, 43 Spaces” Parcel 80 adjacent to the proposed “Future Modular Office , 60x89, 5340 SF;”

3. The areas located on Parcel 80 of the Conditional Use Plan dated March 17, 2020 that are shaded grey and located directly north of the driveway and south of the area marked “Ex. Cold Frame” labeled “Commercial Vehicle Parking LS Use 1535.45 SF” and “Commercial Vehicle Parking and Prep/Loading LS Use 15,793.15 SF” shall be used for Landscape Contractor uses only to the extent such uses are more than 100 feet from the lot line between Parcel 80 and “Rosebar Lot 8;”

4. So long as most seasonal employees continue to carpool and, combined with the permanent employees, do not require more than the total number of parking spaces currently proposed (43), the maximum number of employees coming to the site at any one time shall be ninety (90). Because there will necessarily be crossover and overlap among the employees who work in the Landscaping Contractor business and the other businesses operating from the Property, this maximum will apply to the total of all employees on the site, and not just to Landscape Contractor employees;

5. Minor repairs to vehicles or equipment are permitted, provided such activities take place inside a building. Body work, engine rebuilding, engine reconditioning, painting and similar activities are not permitted;

6. Snow removal service as described in the Conditional Use Plan may be conducted as an accessory use;

7. The hours of operation for the Landscape Contractor uses (including snow removal service) shall be limited to:

March - December 5:30 am to 6:30 pm Monday - Saturday
January - February 6:30 am to 5:00 pm Monday – Friday

8. The storage or use of trailers, modular offices, office trailers, shipping containers, or refuse containers shall be conducted in conformance with, and the conditional use for a such uses shall apply only to the uses and structures as described in, the Petition and Conditional Use Plan dated March 17, 2020 and not to any other activities, uses, structures or additions on the Property;

9. First Phase Structures. This Decision and Order shall become void as to the structure Nos. 25, 27 and 30 on the Conditional Use Plan unless a building permit conforming to the Conditional Use Plan is obtained within two (2) years, and substantial construction in accordance therewith is completed within three (3) years from the date of this decision. If a building permit is not necessary for structure Nos. 25, 27 or 30, this Decision and Order shall become void as to those structures unless the use commences within two (2) years from the date of this decision.

10. Second Phase Structures. As to the second phase of the Conditional Use Plan -- structure Nos. 29, 31 and 32 -- this Decision and Order shall become void unless a building permit conforming to the Conditional Use Plan is obtained within five (5) years, and substantial construction in accordance therewith is completed within six (6) years from the date of this

decision. If a building permit is not necessary for structure Nos. 29, 31 and 32, this Decision and Order shall become void as to those structures unless the use commences within (5) years from the date of this decision.

11. The Site Development Plan, or its equivalent, shall include a note containing all conditions of approval; and

12. Petitioner shall comply with all federal, state, and local laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

**Katherine
L. Taylor**

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Katherine L. Taylor
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Date Mailed: _____

NOTICE: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.